

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

JAVIER PINEIRO ORTIZ,

Plaintiff,

v.

Case No: 6:16-cv-1986-Orl-37DCI

**COMMISSIONER OF SOCIAL
SECURITY,**

Defendant.

REPORT AND RECOMMENDATION

This cause comes before the Court for consideration without oral argument on the following motion:

**MOTION: Unopposed Request for Authorization to Charge a
Reasonable Fee Pursuant to 42 U.S.C. § 406(b) (Doc. 28)**

FILED: October 14, 2020

THEREON it is Recommended that the motion is GRANTED.

Plaintiff's counsel moves for an award of attorney fees pursuant to 42 U.S.C. § 406(b)(1). Doc. 28 (the Motion).¹ Plaintiff's counsel states that following the Court's reversal of the Commissioner's decision denying disability benefits and remand of the case for further administrative proceedings, Plaintiff was awarded \$31,619.50 in past-due benefits. Doc. 28 at 2. A quarter of the total amount of benefits awarded in this matter equates to \$7,904.87. See 42 U.S.C. § 406(b)(1) (recovery of such fees under this section may not exceed 25% of the total past-

¹ The Motion is unopposed. Doc. 28 at 3.

due benefits). Plaintiff's counsel, however, only seeks to recover \$4,892.50 in attorney fees pursuant to § 406(b). Doc. 28 at 2. Plaintiff's counsel states that the fees he seeks to collect includes a deduction of the attorney fees (\$3,012.37) previously awarded under the Equal Access to Justice Act (EAJA). *Id.* at 2; *see Jackson v. Comm'r of Soc. Sec.*, 601 F.3d 1268, 1274 (11th Cir. 2010) (holding that counsel may effectuate the refund of a smaller EAJA award by either refunding the amount awarded under the EAJA to the client or deducting that amount from counsel's request for § 406(b) fees). Upon review, the undersigned finds that Plaintiff's counsel's request for \$4,892.50 in attorney fees does not run afoul of the limit imposed by § 406(b) and is reasonable under the circumstances of this case.

Accordingly, it is respectfully **RECOMMENDED** that the Motion (Doc. 28) be **GRANTED** and Plaintiff's counsel be authorized to charge and collect from Plaintiff the sum of \$4,892.50 in attorney fees.

NOTICE TO PARTIES

A party has fourteen days from this date to file written objections to the Report and Recommendation's factual findings and legal conclusions. A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. *See* 11th Cir. R. 3-1.

Recommended in Orlando, Florida on October 14, 2020.

Copies furnished to:
Presiding District Judge
Counsel of Record
Unrepresented Party
Courtroom Deputy



DANIEL C. IRICK
UNITED STATES MAGISTRATE JUDGE